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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~462.~~ 188

JOHN F. B. THOMPSON, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES EX REL. THE CAMBRIA IRON COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED SEPTEMBER 3, 1878.

SUPREME COURT OF THE UNITED STATES.

No. 462.

JOHN F. B. THOMPSON, PLAINTIFF IN ERROR,

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1 Supreme Court of the United States.

JOHN F. B. THOMPSON, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES EX REL. THE CAMBRIA IRON COMPANY, defendant in error.

To the clerk of the circuit court of the United States for the western district of Michigan:

The above-named John S. B. Thompson hereby makes application to you to obtain a writ of error from the said Supreme Court, to be directed to the said circuit court, to bring up the record in a certain suit lately depending in the said circuit court, wherein the above-named United States, being on the relation of the Cambria Iron Company, was plaintiff, and the said John F. B. Thompson was defendant, in mandamus. The said John F. B. Thompson complaining that error hath witnessed in the said record to his detriment.

You will please issue the said writ in the usual form and make the same returnable on the first day of the next ensuing term of the said Supreme Court.

Yours,

HENRY F. SEVERENS,
Att'y for Pl'ff in Error.

Dated July 19th, A. D. 1877.

(Indorsed:) No. 1073. Supreme Court of the United States. John F. B. Thompson, pl'ff in error, vs. The United States ex rel. The Cambria Iron Company, def't in error. Application for writ of error received & filed July 19th, 1877. C. B. Hinsdill, clerk. Henry F. Severens, att'y for pl'ff in error.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the western district of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, Solomon L. Withey, district judge, sitting as circuit judge, between the United States, upon the relation of the Cambria Iron Company, plaintiff, and John F. B. Thompson, defendant, a manifest error hath happened, to the great damage of the said defendant, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court, the 19th day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

[SEAL.] CHESTER B. HINSDILL,
Clerk of the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan,
By A. B. CARRIER *Deputy.*

Allowed by—

S. L. WITHEY,
Dist. Judge.

(Indorsed:) Supreme Court of the United States. John F. B. Thompson, pl'ff in error, vs. The United States ex rel. The Cambria Iron Company, deft. in error. Writ of error. Henry F. Severens, att'y for pl'ff in error.

3 The United States of America to the Cambria Iron Company, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the western district of Michigan, wherein John F. B. Thompson is plaintiff in error and you, prosecuting as relator in the name of the United States, are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of said Supreme Court, this 19th day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

S. L. WITHEY,
District Judge of the United States for the Western District of Michigan.

UNITED STATES OF AMERICA,
Western District of Michigan, ss:

C. K. Turner, being duly sworn, says that he served the above citation by delivering a true copy thereof, duly endorsed, with a notice of which the notice hereon endorsed is a copy, on Mitchell J. Smiley, one of the members of the firm of Hughes, O'Brian & Smiley, who were the attorneys for the defendant in error in the court below, on the 19th day of July, A. D. 1877.

C. K. TURNER.

Subscribed and sworn to this 19th day of July, A. D. 1877, before me.
A. B. CARRIER,
Notary Public.

(Indorsed:) Supreme Court of the United States. John F. B. Thompson, pl'ff in error, vs. The United States ex rel. The Cambria Iron Company, def't in error. Citation and proof of service.

To HUGHES, O'BRIAN & SMILEY,
Att'ys for Def't in Error in the Court below.

Take notice that the within is a true copy of the original citation issued in the above entitled cause.

Yours,

HENRY F. SEVERENS,
Attorney for Pl'ff in Error.

Dated July 19th, A. D. 1877.

HENRY F. SEVERENS,
Attorney for Pl'ff in Error.

4 Know all men by these presents that we, John F. B. Thompson, as principal, and David Myers, John A. Stone, & Peter Van Deusen, as sureties, are held and firmly bound unto the The Cambria Iron Company in the just and full sum of twelve thousand dollars, to be paid to the said Cambria Iron Company or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this 27th day of November, A. D. 1876.

Whereas lately, at a session of the circuit court of the United States for the western district of Michigan, in a suit depending in said court between the United States, on the relation of the said Cambria Iron Company, as plaintiff, and the said John F. B. Thompson, as defendant, judgment was rendered against the said John F. B. Thompson, and the said John F. B. Thompson having obtained a writ of error from the Supreme Court of the United States, directed to the said circuit court, and filed a copy thereof in the office of the clerk of said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Cambria Iron Company, citing and admonishing it to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of this obligation is such, that if the said John F B. Thompson shall prosecute his said writ of error to effect, and
5 also answer all damages and costs if he fail to make his plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

JOHN F. B. THOMPSON. [SEAL.]
DAVID MYERS. [SEAL.]
JOHN A. STONE. [SEAL.]
PETER VAN DEUSEN. [SEAL.]

Signed, sealed, & delivered in presence of—
JAMES H. JOHNSON.
ANDREW W. OLSON.

Approved by—

S. L. WITHEY,
Dist. Judge.

(Indorsed:) No. 1073. Supreme Court of the United States. John F. B. Thompson, pl'ff in error, vs. The United States ex rel. The Cambria Iron Company, def't in error. Supercedeas bond. Received & filed July 19th, 1877. C. B. Hensdill, clerk. Henry F. Severens, att'y for pl'ff in error.

6 Supreme Court of the United States.

JOHN F. B. THOMPSON, PL'FF IN ERROR,
vs.
THE UNITED STATES EX REL. THE CAMBRIA IRON COMPANY, DEF'TS IN ERROR.

To HUGHES, O'BRIEN & SMILY,
Attorneys for Defendant in Error in the Court below:

GENTLEMEN: You will please take notice that on the 17th day of July, A. D. 1877, having previously sent out a writ of error in the above

cause, I lodged a copy of said writ for the defendant in error with the clerk of the circuit court of the United States for the western district of Michigan, and at the same time deposited a supervisor's bond, duly approved by the Hon. L. L. Withey, district judge, with said clerk, which bond was executed by the pl'ff in error and sureties to the above-named Cambria Iron Company.

Yours, &c.,

HENRY F. SEVERENS,
Att'y for Pl'ff in Error.

Dated July 19th, A. D. 1877.

7 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

C. K. Turner, being duly sworn, deposes and says that on the 19th day of July, A. D. 1877, he served on Mitchell J. Smily, one of the members of the firm of Hughes, O'Brien & Smiley, within named, a notice of which the within is a copy, by delivering the same to him personally at Grand Rapids, in said western district of Michigan.

C. K. TURNER.

Subscribed and sworn to before me this 19th day of July, A. D. 1877.
A. B. CARRIER,
Notary Public.

(Indorsed:) No. 1073. Supreme Court of the United States. John F. B. Thompson, pl'ff in error, vs. The United States ex rel. The Cambria Iron Company, def't in error. Notice of lodging of a copy of writ of error & bond. Received and filed July 19th, 1877. C. B. Hinsdill, clerk. Henry F. Severens, att'y for pl'ff in error.

8 The circuit court of the United States for the western district of Michigan.

THE CAMBRIA IRON COMPANY
vs.
THE TOWNSHIP OF LINCOLN.

To the circuit court of the United States for the western district of Michigan:

Your petitioner, the Cambria Iron Company, a corporation created, organized, and existing under and by virtue of the laws of Pennsylvania, and a citizen of said State, respectfully shows unto this honorable court and to the judges thereof that on, to wit, the 29th day of May, A. D. 1876, your petitioner recovered a judgment in the circuit court of the United States for the western district of Michigan against the township of Lincoln, in the county of Berrien, in said district, which is a citizen of the State of Michigan, for the sum of six thousand two hundred and seventy-three dollars and thirty-two cents damages, and costs of suit to be taxed, and that your petition's costs in said suit were afterward, to wit, on the first day of July, A. D. 1876, taxed at the sum of forty-two dollars and ten cents.

That the said judgment was rendered upon certain bonds and coupons theretofore issued by the said township of Lincoln in aid of the construction of the Chicago and Michigan, Lake Shore Railroad, in pursu-
9 ance of and by virtue of an act of the legislature of the State of Michigan authorizing the issuance thereof, approved March 22d, 1869.

That one John F. B. Thompson was, as your petitioner is informed and believes true, duly elected to the office of township clerk of the said township of Lincoln, at the township meeting held in that township in April, 1876. That he duly qualified as such clerk and exercised the duties of said office of township clerk, as your petitioner is informed and verily believes, and is now the acting clerk of said township, and your petitioner is informed and believes, and charges the truth to be, that no successor has ever been elected, appointed, or qualified to fill the said office in the place of said Thompson.

That on the 26th day of September, 1876, your petitioner caused to be delivered to the said John F. B. Thompson, clerk of said township as aforesaid, a certified copy of the judgment entry in said cause, certified by the clerk of said court, together with a certified statement of the costs taxed as aforesaid, together with a notice, copies of which are hereto attached, and at the same time requested orally the said John F. B. Thompson to certify to the supervisor of said township the said judgment as a sum to be raised on the tax of said township for the coming season in pursuance of the statute of Michigan in such case made and provided.

That the said John F. B. Thompson claimed that he would not, and declared that he would not, take any proceeding towards having the said judgment collected or certifying the same to the supervisor
10 in pursuance of law, to the end that the same might be collected.

That your petitioner is informed and verily believes that the said Thompson then and there claimed to Edward W. Withey, your petitioner's agent, who served said papers and made said request, that there was no supervisor in said township; that one Mitchell Spilliman, who had been supervisor of said township, had resigned, and if there were any supervisor he would not make any certificate as requested; also, that said Thompson further claimed to said Withey, that he, said Thompson, had also resigned, and that he was not clerk of said township, and that no successor in said office had been chosen or appointed.

And your petitioner is informed and believes, and therefore charges the truth to be, that said Thompson then and there stated to said Withey in substance that he and said supervisor had resigned, for the express purpose of defeating the collection of your petitioner's said judgment and the other claims that existed against said township on account of its having issued the bonds aforesaid.

Your petitioner further shows that the said Mitchell Spilliman was regularly appointed supervisor of said township some time during the month of May, A. D. 1876, to fill a vacancy in said office, and that he duly qualified and entered upon the duties of said office and acted as supervisor of said township, but claims to have resigned.

That no successor has been elected or appointed, or qualified as successor to the said Mitchell Spilliman as supervisor aforesaid to
11 the knowledge or belief of your petitioner, and your petitioner is informed and believes that said Mitchell Spilliman still resides in said township; is in fact the acting supervisor thereof, but for the purpose of cheating and defrauding your petitioner out of the moneys due upon his judgment, fraudulently, dishonestly, and untruthfully claims to have resigned and that he is not supervisor of said township.

Your petitioner further shows that said Thompson, said township clerk, still has in his possession the records and files of the chattel mortgages required by law to be kept by the township clerk in his office, and your petitioner is informed and believes, and so states the truth to be, that he has in his possession the other records that properly belong

to said office, and that in truth and in fact he is still the clerk of said township, but falsely, dishonestly, and fraudulently, and with intent to cheat and defraud your petitioner out of the moneys due upon the said judgment, untruthfully claims that he has resigned, and that he is not township clerk of said township.

Your petitioner is informed and believes, and charges the truth to be, that the officers of the said township of Lincoln, including the said clerk and supervisor, have falsely, dishonestly, and fraudulently, and with intent to cheat and defraud your petitioner out of the moneys due upon the said judgment, entered into an agreement, combination, and conspiracy amongst themselves and other citizens of said township to pretend to resign and claim not to be officers of said township at or about this season of the year when taxes are to be certified, and to have no
12 officers apparently for that purpose when the time comes for them to take the necessary steps to collect the moneys by tax to pay the said judgment and other judgments against said township. That they do, however, act in the capacity of officers for the purpose of certifying all other taxes necessary to be raised, but when requested to certify your petitioner's judgments, they decline so to do, and claim to have resigned.

That your petitioner is informed and believes, and charges the fact to be, that said John F. B. Thompson has neglected and refused to certify the said judgment to the supervisor of said township for the year 1876, as a sum of money proposed and proper to be raised in the taxes of said township for said year, although he should have certified the same on or before the first day of October, 1876.

Your petitioner shows that the said township of Lincoln has utterly refused by its officers to raise and provide money to pay the said judgment and the bonds on which it was rendered, and that there is no money in the township treasury of said township to pay your petitioner's said judgment as your petitioner is informed and believes true.

Your petitioner shows that he is remediless in the premises unless a writ of mandamus issue out of this court, directed to the said John F. B. Thompson, commanding him to duly certify the said judgment as required by law and as hereinafter prayed.

Your petitioner therefore prays that a writ of mandamus may
13 issue out of this court, under the seal thereof, directed to the said John F. B. Thompson, clerk of said township of Lincoln, commanding him to make and deliver to the said supervisor of said township of Lincoln a certified copy of the said judgment and a statement duly certified of the amount of money necessary to be raised for the express purpose of paying the said judgment, both as to damages, costs, and interest, and in case it is found that there is not a supervisor in said township of Lincoln or that said supervisor fraudulently refuses to act or claims to have resigned, then that the said clerk may be commanded to make out the necessary certificate and deliver the same directly to the clerk of the board of supervisors of said Berrien County.

And your petitioner prays for such further and such other relief in the premises as the court may think proper and within its power.

And your petitioners will ever pray, &c.

THE CAMBRIA IRON COMPANY,
By HUGHES, O'BRIEN & SMILEY,
Its Agents & Attorneys.

14 STATE OF MICHIGAN,
County of Kent, ss:

On this 3d day of October, 1876, before me personally appeared Mit-

chell J. Smiley, of said county, who, being duly sworn, deposes and says that he is a member of the firm of Hughes, O'Brien & Smiley; that they are the agents of the Cambria Iron Company, for the purpose of making this petition, and that the said Hughes, O'Brien & Smiley are duly authorized to sign the same for said Cambria Iron Company, and that they have signed the same in its behalf, said Cambria Iron Company and all its officers being absent in another State; that the said Smiley is acquainted with the facts in said petition alleged, and has heard the same read and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

E. W. WITHEY,
Notary Public in and for the Kent County in said District.

15 WESTERN DISTRICT OF MICHIGAN:

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 27th day of May, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the one hundred—present, the honorable Solomon L. Withey, district judge—among the proceedings then are there had were the following, to wit:

THE CAMBRIA IRON COMPANY
vs.
THE TOWNSHIP OF LINCOLN.

This cause having been called for trial, the following jury was called and sworn, to wit: A. B. Slawson, R. E. Mathews, Horton Crandall, Jessie Stone, Aaron B. Miner, Robert Thompson, John Hamlin, George W. Garde, Thaddeus L. Waters, Legrand Whitcomb, C. W. Guirsup, and Richard Byron, who sat together in the jury-box, and heard the evidence this day adduced, the argument of counsel, and the charge of the court, and without leaving their seats say, upon their oath, that the defendant is guilty in manner and form as alleged in the declaration, and assess its damages at the sum of six thousand two hundred seventy-three dollars and thirty-two cents, over and above its costs and
16 charges. It is, therefore, considered by the court that the said plaintiff do recover against the said defendant the said sum so assessed, together with its costs and charges to be taxed, and that it have execution therefor.

a United States courts, western district of Michigan.

THE CAMBRIA IRON CO.
vs.
THE TP OF LINCOLN.

Copy of costs as taxed.
Judgment, May 29, 1876.

Damages		$6,273 32
Costs, clerk	$13 30	
" marshal	$ 8 80	
" witnesses	$	
" commissioner	$	
" attorney	$20 00	
		$42 10

CHESTER B. HINSDILL, *Clerk.*

b THE UNITED STATES OF AMERICA,
Western District of Michigan, ss:

I, Chester B. Hinsdill, clerk of the circuit court of the United States for the said district, hereby certify that the foregoing is a true copy of the judgment and costs entered upon the journal of the proceedings of said court in said entitled cause.

Witness my official signature and the seal of said court in Grand Rapids, this 22 day of September, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] CHESTER B. HINSDILL, *Clerk*,
By A. B. CARRIER, *Deputy*.

UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth circuit & western district of Michigan.

I, Chester B. Hinsdill, clerk of said court, do hereby certify that the rate of interest specified in the instruments on which the judgment, of which the annexed is a transcript, was rendered, is ten per cent. per annum.

Witness my official signature and the seal of said court at Grand Rapids, this 22d day of September, A. D. 1876.

[SEAL.] CHESTER B. HINSDILL,
Clerk,
By A. B. CARRIER, *Deputy*.

17 SIR: You will please take notice that the annexed is a certified copy of a judgment entry in the circuit court of the United States for the western district of Michigan, in the cause therein mentioned; that the amount of the judgment so rendered, together with interest at the rate of ten per cent. from the date of rendering the same, and costs taxed at forty-two and $\frac{10}{100}$ dollars, and the whole thereof, remain still due and unpaid, and are a claim against the Township of Lincoln, whereof you are clerk. You are, therefore, notified that I hereby deposit this evidence of such indebtedness with you, and ask that you file the same in your office, and further, that on or before the first day in October, 1876, you deliver to Mitchell Spillman, the supervisor of said township of Lincoln, a certified copy of the annexed claim and statement, to the end that money may be raised by taxation to pay the same, in pursuance of section nine hundred & ninety two of the compiled laws of 1871.

Dated September 25th, 1876.

Yours, &c.,

THE CAMBRIA IRON COMPANY,
By HUGHES, O'BRIEN & SMILY,
Its Agents and Attorneys.

To JOHN F. B. THOMPSON.

18 The circuit court of the United States for the western district of Michigan.

THE CAMBRIA IRON COMPANY
vs.
THE TOWNSHIP OF LINCOLN.

UNITED STATES OF AMERICA,
Western District of Michigan, ss:

Edward W. Withey, of Grand Rapids, being duly sworn, deposes and

says that he has heard read the annexed petition; that he is the same person mentioned in said petition as the one who served certain papers, copies of which are annexed to said petition, on John F. B. Thompson, on the 26th day of September, 1876; that he called on said Thompson and enquired who was clerk of said township; said Thompson said he did not know, that he had been clerk; said Withey then asked to see the records of the township, and said Thompson produced the record of chattel mortgages of said township; said Thompson then said that they did not keep any other records—that the law did not require them to keep any. Said Withey then offered him the transcript of the judgment entry and notices attached to the petition, which the said Thompson refused to accept, saying that he would not accept them or look at them, that he was not clerk, but had resigned. Said
19 Withey then asked him why he had resigned, and said Thompson replied there were too many township bonds against that town for him to stay in office, that he should not look at the papers served and would not certify them to the supervisor; that there were twenty men in that township who would shoot him if he should do so, and commenced naming them and counting them; thereupon said deponent requested said Thompson to certify them to the supervisor as required by law, which said Thompson said he should not do; that when he went to Lincoln deponent inquired for the township clerk, and was directed by a citizen in the township to the said Thompson as holding said office; and further deponent says, that he asked him, Thompson, when he resigned, and he replied that he did not know, that he could not remember the date; that said Thompson also had on file in his office some resignations of certain supervisors in the town, and stated that since his resignation no one had called on him for the files of his office as his successor.

E. W. WITHEY.

Subscribed and sworn to before me this 3d day of October, A. D. 1876.

N. A. EARLE,
Notary Public. Kent County, Michigan.

(Indorsed:) The circuit court of the United States for the western district of Michigan. The Cambria Iron Company vs. The Township Clerk of Lincoln. Petition for mandamus, &c. Filed Oct. 3, '76. Chester B. Hinsdill, clerk. Hughes, O'Brien & Smiley, atty's for pet'r.

20 The circuit court of the United States for the western district of Michigan.

THE CAMBRIA IRON COMPANY
vs.
THE TOWNSHIP OF LINCOLN.

At a session of said court, held on the 3d day of October, A. D. 1876, at Grand Rapids, in said district.

Present, Hon. Solomon L. Withey, district judge.

In this cause, on reading and filing the petition of the Cambria Iron Company, duly verified together with the papers and affidavit thereto attached, and on motion of Hughes, O'Brien & Smiley, attorneys for said petitioner, it is ordered by the court that John F. B. Thompson show cause on the 9th day of October, A. D. 1876, at ten o'clock a. m.,

before the circuit court of the United States for the western district of Michigan, at the United States court room in Grand Rapids, in said district why a mandamus should not issue against him in accordance with the prayer of said petitioner. It is further ordered that a copy of said petition, papers, and affidavit annexed thereto, and of this order be served on said Thompson four days before the day aforesaid named on which he is ordered to show cause.

21 WESTERN DISTICT OF MICHIGAN, *ss:*

I hereby certify and return that I did on the 4th day of October, A. D. 1876, serve a copy of the within order to show cause, together with a copy of the within mentioned petition, on John F. B. Thompson, the duly elected clerk of said township of Lincoln, personally, duly certified to be the clerk of said court, with the seal of the court endorsed thereon.

JOHN PARKER,
U. S. Marshall.
By S. J. BAILEY, *Dep'ty.*

(Indorsed:) The circuit court of the United States for the west. dist. of Mich. The Cambria Iron Company vs. The Township Clerk of Lincoln. Order to show cause. Filed October 3, '76. Chester B. Hinsdill, clerk.

22 The circuit court of the United States for the western district of Michigan.

THE CAMBRIA IRON COMPANY }
vs.
THE TOWNSHIP OF LINCOLN. }

In the matter of the application of the said Cambria Iron Company for mandamus against John F. B. Thompson.

To said circuit court:

And now comes the said John F. B. Thompson, pursuant to an order of this court, made on the 3d day of October, A. D. 1876, requiring him to show cause why mandamus should not issue against him according to the prayer of the petitioner of the said Cambria Iron Company, upon which the said order was made, and states and shows unto the court in response to the said petition that he has no personal knowledge of the rendition of the judgment against the said township of Lincoln, and in favor of the said Cambria Iron Company, alleged in the said petition, but that he is informed and verily believes that judgment was entered in form in this court as alleged in said petition, but this respondent is also informed, and verrily believes that this court never obtained jurisdiction in said cause to render such judgment for the reasons, as this respondent is informed and believes, that no service was ever had
23 of process in said cause upon the supervisor of said township or other persons authorized by law to be served with process in the institution of such suit, and that in fact there was no service of process in any legal method requisite to give the court jurisdiction of the defendant in said suit, and that Alonzo D. Brown, upon whom service of process purports to have been had in said cause as supervisor of said township, was not at the time of such service supervisor of such township, and that, as this respondent is likewise informed, and verrily believes, no appearance was ever entered on behalf of defendant in that suit by any person having authority from the said township to appear in said suit in

its behalf. And that George S. Clapp, who purports to have appeared for the defendant in said suit, had no authority from such township to appear for the defendant in said suit.

And the respondant, further answering said petition, states and shows that he admits that he was duly elected township clerk of said township at the township meeting, held in that township in April, 1876, and that he qualified and acted as such township clerk thereafter, until on or about the 20th day of September, A. D. 1876, but he denies that he is now, or has been since that time the township clerk of said township, and he states and shows that before the order requiring this respondent to show cause as aforesaid was made, and before the 26th day of September, A. D. 1876, and on or about the 20th day of said September, the respondent
24 resigned his said office as township clerk of said township, and here states and shows that on or about said last named date the respondent made out his resignation of his said office in writing, the same being directed to the township board, and being in terms as follows:

LINCOLN TOWNSHIP, *Sept.* 20, 1876, 3 *o'clock p. m.*

To the Township Board:

I hereby resign the office of clerk of Lincoln Township.

JOHN F. B. THOMPSON.

And the said resignation was by this respondent filed in the office of the township clerk and deposited among the files pertaining to the business of said township on or about said last mentioned date. And this respondent, further answering, states and shows that although the records, files, and papers pertaining to said office of township clerk have remained at the residence of the respondants since his said resignation, this respondant has not acted or claimed to be or act as township clerk of said township, and this respondent has no knowledge or information of the appointment or election of any other person as township clerk of said township since that time.

And this respondant admits that there was delivered to him on the said 26th day of September, in behalf of the said Cambria Iron Company, a certified copy of what purports to be a judgment of this court, together with a notice, copies of which alleged judgment and notice are
25 attached to said petition, and that an oral request was made of this respondent that he should certify said judgment to the supervisor of said township, as a sum to be raised in the tax of the said township for the coming season.

This respondent further states and shows that upon such request this respondent refused to certify said judgment, as requested, and assigned as reasons therefor, in substance, that this respondent was not then township clerk of said township, and had no authority to make any such certificate, and also that there was no person in office as supervisor of said township, Mitchell Spillman, who had previously acted as such having resigned his office prior to that day. And this respondent states and shows that he is informed, and verily believes, that the said Mitchell Spillman, who had been supervisor under election at said township meeting in April, had, prior to the date of such request, resigned his said office, and that the office of supervisor of said township was at the date of said request and is now vacant.

This respondent admits that said Spilliman resides in said township, but this respondent has no knowledge of his acting as supervisor at the time of filing said petition or since, and verily believes that he was not then acting, and is not now acting, as supervisor of said township.

And this respondent, further answering, denies that he has any knowledge of any such agreement, combination, or conspiricy to cheat and defraud the petitioner, as is alleged in said petition, and for
26 himself says that he resigned his said office with the intent and purpose to have the same take effect fully, and with the intent no longer to act as such township clerk.

And this respondent further says that he has not certified said judgment as aforesaid, and for the reason hereinbefore alleged.

And this respondent also states that he has no knowledge that the amount which would be required to pay such alleged judgment has been raised by said township, and he is informed and believes that it has not been so raised.

And this respondent states and shows that, for the reasons above given, he is without the power to perform the act and official duties which the said petitioner requires of him, as asked in said petition, and has no power to comply with a mandamus such as is therein prayed.

Wherefore this respondent prays that the said order to show cause may be discharged.

JOHN F. B. THOMPSON.

UNITED STATES OF AMERICA,
Western District of Michigan, County of Kalamazoo, ss:

On this 10th day of October, A. D. 1876, personally appeared before me, James H. Johnson, a notary public in and for Kalamazoo Co., John F. B. Thompson, who, being by me duly affirmed, under the pains and penalties of perjury, says that he is the respondant above
27 named who signed the foregoing return; that he has heard the same and knows the contents thereof; and that the same is true of his own knowledge, except as to those matters therein stated to be upon his information and belief, and that as to those matters he believes it to be true.

JAMES H. JOHNSON,
Notary Public, Kalamazoo Co., Mich.

(Indorsed:) The circuit court of the United States for the western district of Michigan. The Cambria Iron Company vs. The Township Clerk of Lincoln. Return to order to show cause. Filed Oct. 11, '76. Chester B. Hinsdill, clerk.

28 The circuit court for the United States for the western district of Michigan.

THE CAMBRIA IRON COMPANY }
vs.
THE TOWNSHIP OF LINCOLN. }

And the said plaintiff, by Hughes, O'Brien & Smiley, its attorneys, says that the said answer and return of the said respondent is insufficient in law, and for cause of demurrer the said plaintiff alleges as follows:

1st. The answer that Geo. S. Clapp, the attorney who appeared in the original action, had no authority to appear cannot be inquired of in this proceeding.

2d. So much of said answer as states that the person served in the original action was not supervisor is insufficient, because it fails to state that he resigned, or that his resignation had been accepted, or why he was not supervisor.

3d. That part of the answer which says that respondent had resigned does not state that his successor had qualified or resigned.

4th. That part of said answer is insufficient, because it shows affirmatively that no such successor has been appointed, elected, or qualified, and the relator still had possession of the records of the said office of township clerk of said Lincoln.

And for that the said answer and return is otherwise informal, uncertain, and insufficient in law.

29 Wherefore said plaintiff prays judgment of the said answer and return.

Dated October 11th, 1876.

HUGHES, O'BRIEN & SMILEY,
Att'ys for Pl'ff & Petitioner.

Service of the within hereby admitted.

SEVERENS, BOUDEMAN & TURNER,
Att'ys for Respondant Thompson.

OCTOBER 12, 1876.

(Indorsed:) U. S. circuit court, western dist. of Michigan. The Cambria Iron Company vs. The Township Clerk of Lincoln. Demurrer to return. Filed Oct. 12, '76. Chester B. Hinsdill, clerk. Hughes, O'Brien & Smiley, att'ys for pl'ff & petitioners.

30 The circuit court of the United States for the western district of Michigan.

THE CAMBRIA IRON COMPANY
vs.
THE TOWNSHIP OF LINCOLN.

Upon the application of the said Cambria Iron Company for mandamus against John F. B. Thompson.

The said Cambria Iron Company having interposed its demurrer to the return of the said John F. B. Thompson to the order to show cause herein,

Now comes the said John F. B. Thompson, by Severens, Boudeman & Turner, his attorneys, and says that the said answer is sufficient in law.

SEVERENS, BOUDEMAN & TURNER,
Att'ys for the said John F. B. Thompson.

Due service of the within is hereby admitted.
October 12th, 1876.

HUGHES, O'BRIEN & SMILEY,
Att'ys for Pl'ff & Petitioner.

(Indorsed:) The circuit court of the United States for the western district of Michigan. The Cambria Iron Company vs. The Township Clerk of Lincoln. John F. B. Thompson's joinder in demurrer in mandamus. Filed Oct. 12, '76. Chester B. Hinsdill, clerk.

31 THE UNITED STATES OF AMERICA,
Western District of Michigan, ss!

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of

Grand Rapids, on the 12th day of October, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and first—present, the honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE CAMBRIA IRON COMPANY
vs.
JOHN F. B. THOMPSON, CLERK OF THE TOWNship of Lincoln.

In this cause the respondent having answered and made return to the order to show cause why a mandamus should not issue, and the petitioner having demurred thereto, and joinder in demurrer having been filed, and the said demurrer having been argued before the court, it is ordered and adjudged that the said demurrer be, and the same is hereby, overruled; and it is further ordered that the said plaintiff plead over to the said return, and that he is hereby given leave to plead to the said return.

32 The circuit court of the United States for the western district of Michigan.

THE CAMBRIA IRON COMPANY
vs.
THE TOWNSHIP OF LINCOLN.

In this cause the demurrer heretofore filed and interposed by the said plaintiff and petitioner having been overruled, and leave having been given by the court to the said plaintiff and petitioner to plead over, now comes the said plaintiff and petitioner and by Hughes, O'Brien & Smiley, its attorneys, demands a trial of the matters & things set forth in said plaintiff's answer and return.

Dated October 12th, 1876.

HUGHES, O'BRIEN & SMILEY,
Pl'ff's & Petition'r's Attorneys.

(Indorsed:) The U. S. circuit court, western district of Michigan. The Cambria Iron Company vs. The Township Clerk of Lincoln. Plea to answer on mandamus. Filed Oct. 12, '76. Chester B. Hinsdill, clerk. Hughes, O'Brien & Smiley, pl'ff's & petitioner's att'ys.

33 THE UNITED STATES OF AMERICA,
Western District of Michigan, ss:

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 16th day of November, in the year of our Lord one thousand eight hundred and seventy-six, and of the Independence of the United States of America the one hundred and first—present the honorable Halmer H. Emmons, circuit judge, and the honorable Solomon L. Withey, district judge—among the proceedings then and there had were the following, to wit:

THE UNITED STATES EX REL. THE CAMBRIA Iron Company
vs.
JOHN F. B. THOMPSON, CLERK OF THE TOWNship of Lincoln.

The jury heretofore empanneled in this cause sat together in the jury box and heard the evidence this day adduced, and after listening to the arguments of counsel and the charge of the court, retired in charge of an officer of the court *retired in charge of an officer of the court* sworn to attend them, to consider of their verdict to be given; and after being absent for a time, return into court and say, upon their oaths, that they find as follows:

First. That on the 23d day of November, 1875, Alonzo Brenner, upon whom the declaration was served in the original case of The Cambria Iron Company vs. The Township of Lincoln, was supervisor of said township of Lincoln, and was such supervisor at the time the declaration in said cause was served upon him as such supervisor by the
34 marshal.

Second. That George S. Clapp, who entered his appearance as attorney for the defendant in said cause, and appeared and plead therein for said township of Lincoln, was duly authorized by said defendant to appear and plead for it in said cause.

Third. That the respondent, John F. B. Thompson was, at the time of the service of the order to show cause in this why a mandamus should not issue against him, clerk of the said township of Lincoln, and still is such clerk, and has not resigned the said office.

Fourth. That Mitchell Spillman was, at the time the said order to show cause was served, the supervisor of said township, and still holds the said office, and held the said office on October 1st, A. D. 1876. And the jury having found a verdict in favor of the relator and against the respondent upon all the issues joined therein, thereupon the said relator moved for a *pre*emptory writ of mandamus against the said respondent according to the prayer of said relator's petition; and there-
35 upon, after hearing the argument of counsel, and after the consideration by the court, it is considered and adjudged by the court that in this cause a *pre*emptory writ of mandamus issue against *said* the said respondent, John F. B. Thompson, as prayed by the said relator in his said petition. It is further considered and adjudged that the said relator recover his costs against the said respondent to be taxed, and that the relator have execution therefor. On application it is further ordered that respondent have ten days in which to file bill of exceptions, with stay of proceedings in the mean time.

36 Circuit court of the United States for the western district of Michigan.

UNITED STATES OF AMERICA EX REL. THE Cambria Iron Company
vs.
JOHN F. B. THOMPSON.

The court is requested by counsel for the defendant to charge the jury in accordance with the following several propositions:

1st. That the filing in the office of the township clerk of the written resignation of Alonzo D. Brown, offered in evidence, terminated the

official character of said Brown, and no service of process on him thereafter would be a valid service, or give the court jurisdiction over the defendant in that case, that is to say, the case of The Cambria Iron Company against The Township of Lincoln.

Declined.

2d. That the employment by said Brown, after the filing of his written resignation, of Mr. Clapp as the attorney of the Township of Lincoln to defend it against the suit of the Cambria Iron Company did not give Mr. Clapp any valid authority to appear for the defendant in that suit, nor does the fact that the treasurer of the township paid Mr. Clapp's bill under the circumstances testified to amount to a ratification or constitute any evidence of Clapp's authority to act for the township.

37

Declined.

3d. That the filing in the office of the township clerk of the written resignation of Mitchell Spilliman created a vacancy in the office of supervisor of the township.

Declined.

4th. That if the jury find from the evidence that the defendant, John F. B. Thompson, on or about the 22d day of September last, made out his written resignation offered in evidence, and deposited the same in the office of the then township clerk, and did not thereafter act as township clerk, that constituted a valid resignation, and no acceptance thereof was necessary.

Declined.

5th. That the action of the township board on the 4th day of November constituted a sufficient acceptance of the defendant's resignation.

Withdrawn.

5th. That the motive with which a resignation is made does not affect the validity of it; the law in determining the validity of a resignation looks to the acts done to that end, and not to the motive with which they are done.

Declined.

6th. If the jury believe from the evidence that the principal motive of the defendant in resigning was to relieve himself from the inconveniences of the office and the ill will of his neighbors which might result from the performance of his official duties, such motive was one which the defendant might lawfully act upon even if he foresaw that his resignation would or might tend to obstruct this plaintiff in the collection of the judgment mentioned in these pleadings.

Declined.

SEVERENS, BOUDEMAN & TURNER,
Att'ys for Def't.

(Indorsed:) No. 1073. The circuit court of the United States for the Western dist. of Michigan. Cambria Iron Company vs. The Township of Lincoln. In the matter of mandamus against John F. B. Thompson. Def't's request to charge the jury. Filed Nov. 16, 1876. Chester B. Hinsdill, clerk.

38 THE UNITED STATES OF AMERICA,
Western District of Michigan, ss:

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids on the 25th day of November, in the year of our Lord one thousand eight hundred and seventy seven, and of the Independence

of the United States of America the one hundred and first—present, the honorable Solomon L. Withey, district judge—among ths proceedings then and there had were the following, to wit:

THE UNITED STATES EX REL. THE CAMBRIA Iron Company,
vs.
JOHN F. B. THOMPSON, CLERK OF THE TOWNship of Lincoln.

In this cause, on motion of Severns, Boudeman and Turner, attorneys for defendant, it is ordered that the time for filing bill of exceptions be extended to the 2d day of December, A. D. 1876, with stay of proceedings in the meantime.

39 The circuit court of the United States for the western district of Michigan.

JOHN F. B. THOMPSON
ads.
THE UNITED STATES, EX REL. THE CAMBRIA Iron Company.

At a session of said court, held at the court-house in Grand Rapids, in said western district of Michigan, on the 16th day of November, A. D. 1876, before the Hon. H. H. Emmons, circuit judge, and Hon. S. L. Withey, district judge, judges of the said circuit court, the issue joined between the parties in this suit came on to be tried by a jury for that purpose duly impanneled of lawful jurors, at which day came there as well the said parties by their respective attorneys, and the said jurors were then and there duly chosen and sworn to try the issue aforesaid between the parties aforesaid. And upon the trial of the issue aforesaid the counsel for the relator, to maintain and prove the issue on his part, gave in evidence the return of the marshall endorsed upon the declaration in the suit of the Cambria Iron Company vs. The Township of Lincoln, showing the mode of service upon the defendant in that cause of the process by which the same was commenced; said return was in the words and figures following, viz:

40 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

I hereby certify and return that on the 23d day of November, A. D. 1875, I served the annexed declaration on the township of Lincoln, the defendant within named, by delivering a true copy thereof personally on Alonzo D. Brown, the supervisor of said township, defendant, which said copy had endorsed thereon a notice to plead as is endorsed hereon.

JOHN PARKER,
U. S. Marshall,
By S. J. BAILEY,
Deputy.

Said counsel for the plaintiff (relator) then called as witness for said relator one George L. Clapp, who, being sworn, testified that he was an attorney of this court, and that he was called upon after the commencement of this suit by the Cambria Iron Company against the township of Lincoln by A. D Brown, who, as the witness then supposed, was super-

visor of that township, and was requested by said Brown to appear for and defend said township, and that said Brown handed witness the papers which had been served on said Brown, and that the witness appeared for said township, and afterwards made out his bill for services in that case, and that he was directed by said Brown to present said bill for payment to the treasurer of said township, and that afterwards meeting Duncan Whiting, the treasurer of the township, he presented his said bill, and it was paid at St. Joseph, which is a township
41 next north of the township of Lincoln.

Counsel for the relator also offered in evidence the records and files in the Cambria Iron Company vs. The Township of Lincoln, showing that the suit was commenced by filing declaration, and entering rule to plead; that Clapp, as attorney for defendant, interposed a plea in abat'ment; that A. D. Brown was not supervisor at the date of service in that suit, and also joined therewith a plea of the general issue, with notice of special matters; that the plaintiff demurred to the plea in abatement, and that defendant was defaulted for not joining in demurrer, and on the default being made absolute, judgment was rendered for plaintiff.

The counsel for the relator there rested his case. The counsel for the defendant then called as a witness on behalf of said defendant one Wm. Smith, who, being sworn, testified that he knew A. D. Brown, Mitchell Spillman, and John F. B. Thompson, and was familiar with their respective handwritings. The witness produced three several resignations: first, that of A. D. Brown, of the office of supervisor of the township, dated September 8th, 1875; second, that of Mitchell Spillman, of the same office, dated June 22d, 1876; and third, that of the defendant, of the office of township clerk of said township, dated September 20th, 1876, and testified that the several signatures thereto were genuine, and that the witness produced these several papers from the files and papers of that township, and brought them here by direction of the town-
42 ship board; that said files and papers were found by witness at the house of the defendant in a room hired by the township board since the defendant's resignation as a place to keep the township records and papers. That the board who gave the witness his direction and authority was composed of three justices of the peace, naming them. The three several resignations so produced and identified by the witness were in the words and figures following, respectively, viz:

LINCOLN, *Sept. 8th*, 1875.

To the Town Board:

I hereby resign the office of supervisor of Lincoln.

A. D. BOWN.

(Endorsed:) Resignation of A. D. Bown, supervisor of Lincoln Township, Sept. 8th, 1875. Received for record Sept. 8, 1875, 5 p. m. John F. B. Thompson, dep. clerk.

To the Town Board:

I hereby resign the office of supervisor of Lincoln Township.
Dated Lincoln, June 22nd, 1876.

MITCHELL SPILLIMAN.

(Endorsed:) Filed June 22d, 1876, at 11½ o'clock a. m. John F. B. Thompson, town clerk.

43 LINCOLN TOWNSHIP, *Sept.* 20, 1876, 3 *o'clock p. m.*

To the Township Board:

I hereby resign the office of clerk of Lincoln Township.

JOHN F. B. THOMPSON.

These three several papers were offered and received in evidence.

Defendant's counsel then offered in evidence, after identifying the book, the records of the township board of the township of Lincoln, showing that on the 4th day of November, A. D. 1876, the township board appointed a successor to the defendant as township clerk.

The defendant's counsel then rested his case.

The counsel for the relator then offered as a witness in his behalf one E. H. Withey, who, being sworn, testified that he was an attorney in the employment of the relator's counsel; that on the 26th day of September last he saw the defendant at his house and served on him a copy of the judgment in Cambria Iron Company v. Township of Lincoln, with a request that as clerk he should deliver to the supervisor a certified copy thereof. Defendant declined to receive it, and witness left it on a table in his house. That witness sought him as township clerk. Defendant informed witness that he was not clerk, and had resigned his office some time before that.

44 The counsel for relator then proposed, in answer to a question of defendant's counsel, to show that the defendant's motive in resigning the office of township clerk was fraudulent; that he did it for the purpose of putting it out of his power to certify the judgment of the Cambria Iron Company vs. The Township of Lincoln to the supervisor. To which offer the counsel for defendant objected, upon the ground that the proposed testimony was incompetent and inadmissable. That the motive with which an officer resigns his office is immaterial. That the law regards what is done as the act of resignation, and not the motive with which it is done; which objection was overruled by the court. And thereupon defendant's counsel excepted to that ruling. And the witness proceeded to testify that the defendant told him that the reason why he resigned was that there were so many bonds out against the township, and because he did not wish to be instrumental in levying the taxes to pay the same.

Relator's counsel then called as a witness one S. J. Bailey, who, being sworn, testified that he was a deputy marshal, and that he saw the defendant on the 4th day of October last at his house, where witness went to serve process. And thereupon the witness, under the like objection and exception of defendant's counsel as is above stated as having been taken to similar testimony of the witness Withey, gave evidence tending to prove that the defendant at the time of witness' interview with him admitted that his motive for resigning was his fear of the people of his township, if he should act as clerk, in proceedings to levy the

45 taxes to pay the railroad bonds, and his unwillingness to act as clerk for such a purpose.

Thereupon the counsel for the relator called John F. B. Thompson, the defendant, as a witness, who being sworn testified that he had formally acted as township clerk, but had resigned. He was then asked by counsel for relator this question, viz: Why did you resign? To which question defendant's counsel objected, upon the grounds that the same called for matter which was irrelevant to the issue and incompetent, that the motive for doing the act was not competent to be considered

in testing the validity of defendant's resignation, and that the defendant might lawfully resign his office upon any motive which he himself should determine to act upon, which objection was overruled and defendant's counsel excepted.

Thereupon the witness answered that he resigned for several reasons, that his wife was dangerously ill, and the excitement disturbed her, that the people of his township were greatly excited upon the subject of the railroad bonds, that they claimed they were fraudulent and ought not to be paid, that he was afraid of the enmity and ill will of his neighbors and towns people, if as clerk he should take any action toward the collection of the bonds, and that he was unwilling to continue in office so that he should be obliged to do acts in relation to these bonds, and their collection, which would make him an object of hatred among his neighbors, and that on other accounts it was inconvenient for him to hold the office. That it was also charged that he held a railroad bond given to him to influence him to activity and in enforcing the collection of the bonds, and that he, witness, wished to avoid that imputation.

46

The witness then further testified that on the day following the date of his resignation hereinbefore offered in evidence he exhibited the same to two members of the township board, and placed the same on file in the township clerk's office, with the other papers pertaining to the public business of the township of Lincoln.

The relator here rested his rebutting case. Thereupon the relator's counsel moved the court to strike out of the evidence the records of the township board showing that a successor to the defendant as clerk of the township had been appointed by the board on the 4th day of November, for the reason that such facts having arisen since the return was made, they were not competent under the issue framed thereon. The defendant's counsel objected to such striking out, but the court overruled the objection and ordered the same stricken out, to which order and ruling the counsel for defendant excepted; counsel for defendant thereupon requested the court to charge the jury in behalf of defendant that the filing in the office of the township clerk of the written resignation of Alonzo D. Brown, offered in evidence, terminated the official character of said Brown, and no service of process on him thereafter would be a valid service or give the court jurisdiction over the defendant in that case; that is to say, the case of the Cambria Iron Company vs. The Township of Lincoln, which request was refused by the court, and counsel for the defendant duly excepted. Said counsel for the defendant also asked the court to charge the jury that the employment by said Brown after the filing of his written resignation of Mr. Clapp as the attorney of the township of Lincoln to defend it against the suit of the Cambria Iron Company did not give Mr. Clapp any valid authority to appear for the defendant in that suit, nor does the fact that the treasurer of the township paid Mr. Clapp's bill, under the circumstances testified to, amount to a ratification or constitute any evidence of Clapp's authority to act for the township, which request was refused by the court, and counsel for the defendant duly excepted.

47

Counsel for the defendant also requested the court to charge the jury that the filing in the office of the township clerk of the written resignation of Mitchell Spillman created a vacancy in the office of township supervisor, which request was refused by the court, and counsel for the defendant duly excepted. counsel for the defendant requested the court to charge the jury that if they should find from the evidence that the defendant, John F. B. Thompson, on or about the 22d day of September

last, made out his written resignation offered in evidence and deposited the same in the office of the then township clerk, and did not thereafter act as township clerk, that constituted a valid resignation and no acceptance thereof was necessary, which request was refused by the
48 court, and counsel *and* for defendant duly excepted.

Counsel for defendant also requested the court to charge the jury that the motive with which a resignation is made does not affect the validity of it. The law in determining the validity of a resignation looks to the acts done to that end and not to the motive with which they are done. Which request was refused by the court, and counsel for the defendant duly excepted.

Counsel for defendant also requested the court to charge the jury that if they believed from the evidence that the principal motive of the defendant in resigning was to relieve himself from the inconveniences of the offices and the ill will of his neighbors which might result from the performance of the official duties, such motive was one which the defendant might lawfully act upon, even if he foresaw that his resignation would or might tend to obstruct this plaintiff in the collection of the judgment mentioned in these pleadings, which request was refused by the court, and counsel for defendant duly excepted.

And thereupon the said court delivered its opinion to and charged the jury as follows:

The evidence offered does not show that Brown was not supervisor at the time process was served in the case of Cambria Iron Company vs. Lincoln. It appears that he had been supervisor, and we charge you that the evidence offered does not show that he had resigned, no acceptance of such resignation having been proven, to which direction and ruling counsel for defendant excepted. And the said court further charged the jury that the mere filing of such a paper as has been given
49 in evidence as defendent's resignation was not sufficient without some action taken thereon by the town board indicating their acceptance of it, to which ruling and direction counsel for defendant duly excepted.

The court further directed and charged the jury that if they believed the testimony of Clapp he was retained by Brown, and was paid by the township treasurer, the jury should find that Clapp's appearance was sufficiently authorized, to which direction and ruling counsel for defend-ent excepted.

The court further directed and charged the jury that no acceptance of the resignation of Mitchell Spillman having been shown, the jury should find he is still supervisor, to which direction and ruling counsel for defendant excepted.

The said court further directed and charged the jury that the evidence before them as to defendant's resignation was not sufficient to vacate the office as matter of law; that an *exceptance* of his resignation was necessary to make it competent, and the jury should find that the defendant is still township clerk; to which direction and ruling defendant's counsel duly excepted. And the said court, under the charge and instruction so as aforesaid given, left the said issue to the jury, and the jury then and there gave their verdict for the said relator; and inasmuch as the several matters, proceedings, rulings, and exceptions hereinbefore set forth do not appear by the record, and the time for settling such exceptions having been extended until this date, the coun-
50 sel for the defendant hath duly proposed this bill of exceptions, and requested that the same be signed; and thereupon, the said circuit judge being absent, the district judge, being now presiding judge

of the said court, at the request of said counsel for the defendant, hath duly signed this bill of exceptions this 28th day of November, A. D. 1876.

S. L. WITHEY,
Dist. Judge.

(Indorsed:) The circuit court of the United States for the western district of Michigan. The United States ex rel. Cambria Iron Company vs. John F. B. Thompson. Bill of exceptions. Filed February 17, '77. Chester B. Hinsdill, clerk. Severens, Burleigh & Turner, attorneys for def't.

51 Supreme Court of the United States, of the October term of said court, A. D. 1877.

JOHN B. F. THOMPSON, PLAINTIFF IN ERROR,
vs.
THE UNITED STATES EX REL. THE CAMBRIA IRON COMPANY, defendant in error.

And afterwards, to wit, on the second Monday of October, in the same term, before the justices of the Supreme Court of the United States, at the Capitol in the city of Washington, comes the said John F. B. Thompson, by Henry F. Severens, his attorney, and says that in the record and proceedings aforesaid there is manifest error in this, to wit:

First. The said circuit court erred in overruling the objection of the respondent below to the testimony of the witness E. H. Withey as to the reasons assigned to him by the said respondent for his resignation of his office and in permitting to the witness to give that testimony to the jury.

Second. There was like error also in permitting the witness
52 Baily, against the objection of said respondent, to testify to the admissions of said respondent to said witness as to said respondent's motives for resigning his said office.

Third. There was error also in overruling the objection of said respondent's counsel to the question put by counsel for relator to this respondent, when called as a witness, "Why did you resign?" and in allowing the answer of said witness to such question as stated in said record.

Fourth. There was error also in overruling the objection of this respondent to the motion strike out of the evidence the records of the township board showing that a successor of the respondent as township clerk had been appointed by said board on the 4th day of November, and in ordering such evidence to be struck out.

Fifth. There was error also in refusing to grant the request of said respondent to charge the jury "That the filing in the office of the township clerk of the written resignation of Alonzo D. Brown, offered
53 in evidence, terminated the official character of said Brown, and no service of process on him thereafter would be a valid service or give the court jurisdiction over the defendant in that case; that is to say, the case of the Cambria Iron Company vs. The Township of Lincoln."

Sixth. There was error also in refusing the request of said respondent to charge the jury "That the employment by said Brown, after the filing of his written resignation, of Mr. Clapp as the attorney of the Township of Lincoln to defend it against the suit of the Cambria Iron Company did not give Mr. Clapp any valid authority to appear for the

defendant in that suit, nor does the fact that the treasurer of the township paid Mr. Clapp's bill under the circumstances testified to amount to a ratification or constitute any evidence of Clapp's authority to act for the township."

Seventh. There was error also in refusing the request of said respondent to charge the jury "That the filing in the office of the township clerk of the written resignation of Mitchell Spillman created a vacancy in the office of township supervisor."

54 Eighth. There was error also in refusing to grant the request of the said respondent to charge the jury "That if they should find from the evidence that the defendant John F. B. Thompson, on or about the 22d day of September last, made out his written resignation, offered in evidence, and deposited the same in the office of the then township clerk, and did not thereafter act as township clerk, that constituted a valid resignation and no acceptance thereof was necessary."

Ninth. There was also error in refusing to grant the request of said respondent to charge the jury "That the motive with which a resignation is made does not affect the validity of it. The law in determining the validity of a resignation looks to the act done to that end and not to the motives with which they are done."

Tenth. There was also error in refusing to grant the request of the respondent to charge the jury, "That if they believe from the evidence that the principal motive of the defendant in resigning was to relieve himself from the inconvenience of the office and the ill will of his

55 neighbors which might result from the performance of the official duties, such motive was one which the defendant might lawfully act upon even if he foresaw that his resignation would or might tend to obstruct this plaintiff in the collection of the judgment mentioned in these pleadings."

Eleventh. There was error also in charging the jury that "The evidence offered does not show that Brown was not supervisor at the time process was served in the case of Cambria Iron Company vs. Lincoln. It appears that he had been supervisor, and we charge you that the evidence offered does not show that he had resigned, no acceptance of such resignation having been proven."

Twelfth. The said circuit court also erred in charging the jury that the mere finding of such a paper as has been given in evidence as defendant's resignation was not sufficient without some action taken thereon by the town board indicating their acceptance of it.

Thirteenth. The said court also erred in charging the jury "That if they believed from the testimony of Clapp that he was retained by

56 Brown, and was paid by the township treasurer, the jury should find that Clapp's appearance was sufficiently authorized."

Fourteenth. The said court also erred in charging the jury "That no acceptance of the resignation of Mitchell Spillman having been shown, the jury should find he is still supervisor."

Fifteenth. The said court also erred in charging the jury that an acceptance of his resignation was necessary.

And the said John F. B. Thompson prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment.

HENRY F. SEVERENS,
Attorney for Pl'ff in Error.

(Indorsed:) Supreme Court of the United States. John F. B. Thompson, plaintiff in error, vs. The United States ex rel. The Cambria Iron Company, defendant in error. Assignment of error. Henry F. Severens, att'y for pl'ff in error.

THE UNITED STATES OF AMERICA.
Western District of Michigan, ss:

I, Chester B. Hinsdill, clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, do hereby certify that the foregoing is a true copy of the records and files and all of them entered upon the journal of the proceedings of said court in said entitled cause.

Witness my official signature and the seal of said court, in Grand Rapids, this 5th day of October, in the year of our Lord one thousand eight hundred and seventy-seven.

CHESTER B. HINSDILL, *Clerk.*
By A. B. CARRIER, *Deputy.*

(Indorsement on cover:) No. 462. John F. B. Thompson, plaintiff in error, vs. The United States ex rel. The Cambria Iron Company. W. Michigan C. C. U. S. Filed 3rd September, 1878.

SUPREME COURT

OF THE UNITED STATES.

NO. 188.

JOHN F. B. THOMPSON,

Plaintiff in Error.

vs.

THE UNITED STATES, Ex. Rel.,
THE CAMBRIA IRON COMPANY,

Defendant in Error.

BRIEF FOR PLANTIFF IN ERROR.

H. F. SEVERENS, Counsel.

KALAMAZOO. MICH:
H. H. EVERARD & CO., BOOK AND JOB PRINTERS.
1880.

SUPREME COURT

OF THE UNITED STATES.

JOHN F. B. THOMPSON,
Plaintiff in Error,

vs.

THE UNITED STATES EX. REL.,
CAMBRIA IRON COMPANY,
Defendant in Error.

ABSTRACT OF THE CASE.

I.

The relator, the Cambria Iron Co., on the 3d day of October, 1876, filed a petition in the Circuit Court for the Western District of Michigan, praying for a mandamus against the above named plaintiff in error, as Township Clerk of the township of Lincoln, to compel him to deliver to the Supervisor of the township a certified statement of

the relator's claim, being for a judgment against the township, rendered in his favor by the said Circuit Court, in May preceding, for the sum of $6,273,32 besides costs of suit.

The petition set forth the recovery of the judgment, that it was rendered upon certain bonds and coupons issued in aid of a Rail Road. That Thompson was elected Clerk at the annual township meeting in 1876, and continued to be such Clerk; that on the 26th of Sept., the relator presented a certified copy of his judgment to said Thompson and requested him to file the same in his office, and deliver a certified copy to the Supervisor.

That said Thompson refused to do so upon the grounds that he was not then Township Clerk, and that there was no Supervisor in office.

The petition also stated, that in fact one Spillman Mitchell had been appointed Supervisor in May preceding, and that for the purpose of defrauding the relator, he pretended to have resigned, but that such pretence was untrue, and that he was still Supervisor. That the respondent still had in his possession records and files pertaining to the office of Township Clerk, and that his pretence of resignation was false. That he had not certified said judgment to the Supervisor, and the township had not raised money for the payment of the same. (Record, pp. 4, 5, 6.)

II.

On the filing of this petision an order to show cause was made and served, and the respondent at the time, and at the day named, appeared and showed cause, as follows:

That he had no personal knowledge about the rendition of the aforesaid judgment. That he believed such judgment was in form given, but that as he is informed and believes, the court had no jurisdiction to render the same for the want of service of process on the Supervisor of

the township. That an appearance entered by one Geo. S. Clapp, for the defendant in the case, was unauthorized.

The said answer admitted the respondent's election, in April, 1876, but showed that before the said order to show cause was made, and on or about the 20th day of September, the respondent resigned the office. That his resignation was in writing, and was as follows:

"Lincoln Township,
Sept. 20th, 1876, 3 o'clock P. M.

To the Township Board:

I hereby resign the office of Clerk of Lincoln township.

John F. B. Thompson."

That said resignation was filed in the office of the Township Clerk by the respondent, at or about the date thereof. The answer further stated, that although the papers and records pertaining to the office had remained at his residence, he had not acted, nor claimed to act as Township Clerk, and that he had no knowledge of the election of any successor. He admitted the delivery to him of the certified copy of the relator's claim, and that a request was made of him to certify the same to the Supervisor, and stated that the same was refused, for the reason that the respondent was not then Clerk, and had no authority to perform the act requested, and also because by the resignation of Spillman the office of Supervisor was vacant.

And the answer states that for the reasons given, he has not certified the said judgment to the Supervisor, and has no power to do so. (Record, pp. 10, 11, 12.)

III.

To this answer a demurrer was filed by the relator, which being overruled, the relator pleaded the general issue to the answer in the form prescribed by the State practice, and the parties went to trial.

The relator introduced evidence tending to prove the

recovery of the judgment mentioned in the court below, among which was the return of service of the declaration and rule to plead, November 23d, 1875, on A. D. Brown. (See Bill of Exceptions, Record, p. 17.) The testimony of Clapp, the attorney, that he was employed by Brown, the person on whom the service had been made, and that he was paid for his services by the Township Treasurer on an occasion when the Treasurer was at St. Joseph. (Record, pp. 17 and 18.) The record of the judgment was also introduced. The respondent gave evidence to prove the genuineness of the signatures to three several resignations, which were offered and received in evidence; that of A. D. Brown, as Supervisor, Sept. 8th, 1875; that of Mitchell Spillman, as Supervisor, June 22d, 1876, and that of the respondent, as Township Clerk, Sept. 20th, 1876. (Record, pp. 18, 19.)

The relator then gave evidence to prove a request made on the respondent on the 26th of Sept., 1876, to certify the judgment, and then proposed to show that the respondent's motive in resigning the office of Township Clerk was fraudulent, and that he did it for the purpose of putting it out of his power to certify the relator's judgment. To this objection was made by the respondent's counsel, that it was incompetent, that the motive with which an officer resigns his office is immaterial, that the law regards what is done as the act of resignation and not the motive with which it is done. The objection was overruled and evidence given in support of the proposition. The evidence given is stated in 1st and 2d errors as assigned below. The respondent himself was called by the relator, and the question put to him "why did you resign?" and the same objection in substance was renewed, which was overruled, and the witness answered, assigning the motives for his resignation. (Record, pp. 19, 20., fols. 45 and 46.) This evidence is given in the 3d error as assigned below.

And the same witness testified, that on the day following the date of his resignation he exhibited the same

to two members of the Township Board, and placed the same on file in the Township Clerk's office.

The respondent also introduced evidence tending to show that on the 4th day of November, 1876, the Township Board appointed a successor in the office of Township Clerk, and afterwards the court, on motion of the relator, and against the respondent's objection, struck this evidence out, and the respondent excepted thereto. (Record, fols. 43, 46.)

The court charged the jury that the evidence did not show that Brown was not Supervisor at the time process was served on him in the case of Cambria Iron Company vs. Lincoln, because no acceptance of the resignation had been proven; that the filing of the acceptance was not sufficient without some action by the Township Board, indicating their acceptance of it. To this direction the respondent excepted. (Record, p. 21, fols. 48 and 49.) A request to charge substantially the negative of that proposition, coupled with a direction that service of process on Brown, after filing his resignation, did not give the court jurisdiction over the defendant, the township, had been denied by the court. Record, p. 20, fol. 46.)

The court also charged the jury that if Clapp was retained by Brown and paid by the Township Treasurer, his appearance was sufficiently authorized. (Record, p. 21, fol. 49.) This was excepted to, as had been also a refusal to charge the contrary. (Record, p. 20, fol. 47.)

The court also charged the jury that the filing of the resignation of Mitchell Spillman, as Supervisor, was also insufficient, for the want of an acceptance. (Record, p. 21, fol. 49.) To which, as well as to a refusal to charge the opposite, an exception was taken.

The court was requested to charge the jury on behalf of the respondent, that if they found from the evidence that the respondent made out his written resignation offered in evidence and deposited the same in the office of the Town-

ship Clerk, and did not thereafter act as Township Clerk, that constituted a valid resignation, and no acceptance thereof was necessary. (Record, p. 20, fol. 47.) This the court refused, and charged the opposite. (Fol. 49.) To which refusal and to the charge given the respondent excepted.

The court was also requested to charge the jury, that the motive with which a resignation is made, does not affect its validity. The law in determining the validity of a resignation looks to the acts done to that end and not to the motive with which they are done. This was refused and exception was taken. (Record, p. 21, fol. 48.)

The court was further requested to charge the jury, that if the respondent's principal motive in resigning was to avoid the inconveniences of the office, and the ill-will of his neighbors, such motive was one on which he might lawfully act, notwithstanding he might foresee that his resignation might tend to obstruct the collection of the relator's judgment. This request was also refused by the court and exception was taken.

Thereupon a verdict was found in favor of the relator on all the issues joined. (Record, p. 15.)

A peremptory mandamus was ordered against the respondent, and a bill of exceptions being settled, the case comes here on writ of error.

ASSIGNMENT OF ERRORS.

The plaintiff in error alleges the following errors in the record.

First. The said Circuit Court erred in overruling the objections of the respondent below, to the testimony of the witness E. H. Withey, as to the reasons assigned to him by the said respondent, for his resignation of his office, and in permitting the witness to give that testimony to the jury, that the defendant told him that the reason why he resigned was, that there were so many bonds out against

the township, and because he did not wish to be instrumental in levying the taxes to pay the same.

Second. There was like error also, in permitting the witness Bailey, against the objection of the said respondent, to testify to the admissions of said respondent to said witness, as to said respondent's motives for resigning his said office, namely, that his motive for resigning was his fear of the people of his township, if he should act as Clerk, in proceedings to levy the taxes to pay the railroad bonds, and his unwillingness to act as Clerk for such a purpose.

Third. There was error also in overruling the objection of said respondent's counsel to the question put by counsel for relator to this respondent, when called as a witness, "why did you resign?" and in allowing the answer of said witness to such question, as stated in said record, namely, that he resigned for several reasons: that his wife was dangerously ill, and the excitement disturbed her; the people of his township were greatly excited upon the subject of the railroad bonds; that they claimed they were fraudulent and ought not to be paid; that he was afraid of the enmity and ill-will of his neighbors and towns people, if, as Clerk he should take any action toward the collection of the bonds, and that he was unwilling to continue in office, so that he should be obliged to do acts in relation to these bonds, and their collection, which would make him an object of hatred among his neighbors; and that on other accounts it was inconvenient for him to hold the office.—That it was also charged that he held a railroad bond given to him to influence him to activity, and in enforcing the collection of the bonds and that he, witness, wished to avoid that imputation.

Fourth. There was error also in overruling the objection of the respondent to the motion to strike out of the evidence the records of the Township Board, showing that a successor of the respondent as Township Clerk had been appointed by said board, on the 4th day of November, and in ordering such evidence to be struck out.

Fifth. There was error also in refusing to grant the request of said respondent to charge the jury "that the filing in the office of the Township Clerk of the written resignation of Alonzo D. Brown, offered in evidence, terminated the official character of said Brown, and no service of process on him thereafter would be a valid service, or give the Court jurisdiction over the defendant in that case; that is to say, the case of the Cambria Iron Company vs. The Township of Lincoln."

Sixth. There was error also in refusing the request of said respondent to charge the jury "that the employment by said Brown, after the filing of his written resignation, of Mr. Clapp as the attorney of the Township of Lincoln, to defend it against the suit of the Cambria Iron Company did not give Mr. Clapp any valid authority to appear for the defendant in that suit, nor does the fact that the treasurer of the township paid Mr. Clapp's bill under the circumstances testified to amount to a ratification, or constitute any evidence of Clapp's authority to act for the township."

Seventh. There was error also in refusing to grant the request of the said respondent to charge the jury "that if they should find from the evidence that the defendant John F. B. Thompson, on or about the 22d day of September last, made out his written resignation offered in evidence and deposited the same in the office of the then Township Clerk and did not thereafter act as Township Clerk, that constitutes a valid resignation, and no acceptance thereof was necessary."

Ninth. There was also error in refusing to grant the request of said respondent to charge the jury that the motive with which a resignation is made does not affect the validity of it. The law in determining the validity of a resignation looks to the act done to that end and not to the motives with which they are done."

Tenth. There was also error in refusing to grant the

request of the respondent to charge the jury "that if they believe from the evidence that the principal motive of the defendant in resigning, was to relieve himself from the inconvenience of the office, and the ill will of his neighbors, which might result from the performance of the official duties, such motive was one which the defendant might lawfully act upon, even if he foresaw that his resignation might tend to obstruct this plaintiff in the collection of the judgment mentioned in these pleadings."

Eleventh, There was error also in charging the jury that, "the evidence offered does not show that Brown was not Supervisor at the time process was served in the case of Cambria Iron Company vs. Lincoln. It appears that he had been Supervisor. and we charge you that the evidence offered does not show that he had resigned, no acceptance of such resignation having been proven.

Twelfth, The said Circuit Court also erred in charging the jury that "the mere finding of such a paper as has been given in evidence as defendant's resignation was not sufficient withont some action taken thereon by the Town Board indicating their acceptance of it."

Thirteenth, The said court also erred in charging the jury, "that if they believed from the testimony of Clapp, that he was retained by Brown, and was paid by the Township Treasurer, the jury should find that Clapp's appearance was sufficiently authorized.

Fourteenth, The said court also erred in charging the jury, "that no acceptance of she resignation of Mitchell Spillman having been shown, the jury should find he is still Supervisor."

Fifteenth, The said court also erred in charging the jury that, "an acceptance of his, said Spillman's, resignation was neeessury."

POINTS AND AUTHORITIES.

The points for discussion will be grouped under the heads following :

Is it necessary under the laws of Michigan that there would be an acceptance of a resignation of a township officer, such as that of Supervisor and Clerk, in order to make such resignation effectual ?

We insist that it is not necessary there should be such an acceptance.

The statutes of Michigan and the authorities at large are fully given in the brief for plaintiff in error in the case No. 187 immediately proceeding this, involving this same point, and a repetition here is not deemed necessary.

II.

The Court below in its rulings, relating to the admission of evidence, held that the motion of an officer in resigning was material, and that the validity of the resignation as respects the relator would be affected by the question whether it was made for the purpose of obstructing the collection of his judgment, (see the record fol. 44.)

The question on this head shortly stated is whether a party having a judgment agaist a township is in a position to claim that a person holding office therein, and who is liable to be called upon in the course of proceedings for levying a tax to collect the same, shall hold on to the office until the time for such official action occurs in order that he may perform it. Such a doctrine would lead to singular consequences. It would defeat the power of resignation and removal from office in a large class of cases. It would furnish an altogether impracticable test in the trial or title to office. It would introduce an idea of an obligation upon an officer never before heard of.

But there is another answer founded upon settled legal

principles equally valid. When one becomes a creditor of a municipality he does so in view of the laws of the State under which the collection of his debt must be enforced, and he has no legal claim to anything extraordinary in collecting it.

This creditor received his obligation with notice of the right of any township officer to resign for any reason which the officer might think sufficient, and the collection of his debt was subject to all such contingencies as might happen under the laws of the State, existing at the time of the creation of the debt.

III.

But the court while admitting into the case the doctrine that the validity of the resignation might be affected by the nature of the motive which induced it, declined to allow any weight to evidence tending to show that there was no actual fraudulent intent. The rule as held at the Circuit was tantamount to holding that it was fraudulent *per se* toward the relator, for the Clerk to resign, no matter what his motive.

A debtor who has conveyed away his own property, to which his creditor would otherwise have recourse, with an intent charged to be fraudulent, may show that his principal motive was a lawful one, notwithstanding the consequence would be, as he foresaw, to impair the creditor's means for collecting the debt.

If the anomalous doctrine which the court admitted into the case was to be received at all, the respondent was entitled to the ordinary limitations and incidents belonging to it.

IV.

After the issue was joined on the return to the order to show cause, and before the issue was tried in the Circuit

Court, a successor in the office of Township Clerk had been appointed by the Township Board, and that appointment was shown by the township records, which were offered in evidence. Afterwards this evidence was stricken out upon the ground that the fact having arisen since the return was made, it was incompetent under the issue framed thereon,—that is to say, it is presumed, because there was no plea *puis darrein continuance.*

It is submitted that such a plea was not necessary.—Under all the authorities, English and American, whether on statutes or at the common law, the acceptance vacated the office, and the former incumbent had no power to perform the act sought to be compelled. Such an occurrence abated the proceeding at common law as effectually as the death of a defendant.

United States vs Boutwell, 17 Wal. 504.

V.

The other question arising on the record is one relating to the jurisdiction of the court in the original case of the Cambria Iron Company vs. Lincoln. And this it is submitted is in substance the question whether it is competent in a collateral proceeding to controvert a judgment of a court within the same territorial jurisdiction, by showing that there has been no service of process upon any authorized person, and no appearance by any one in behalf of the defendant, having lawful authority. For, as will be presently shown, there was no service of process upon any authorized person, and no employment of counsel, and no ratification of his employment by any one having lawful authority to bind the township by official action.

Recurring then to the proposition, whether it was competent to controvert the jurisdiction of the court over the

defendant in the original suit, the following propositions are submitted:

Several cases have arisen and have been decided by this court, where the question has arisen collaterally, and those decisions have declared that the jurisdiction of the court was always open to question in a collateral suit brought for the enforcement of a liability predicated upon such former judgment, and that it was competent to show that the attorney who had appeared for the defendant had no authority to do so, and that the judgment was therefore not binding.

Among the more recent of the cases decided by this court on that point, are,

Thompson vs. Whitman, 18 Wed. 457.
Knowles vs. Gaslight &c. Co., 19 Wal., 58.
Hill vs. Mendershall, 21 Wal., 453.

In the first of these cases the former decisions were canvassed, and they are not again cited in this brief.

Reference however is made to the examination of them there made, because in many of the reported cases the former suit was in another State, and the court in delivering its opinion has employed language which might be thought to imply that the doctrine in question applied only to a case when the former suit was in another State from that in which the suit was brought to enforce it.

The fact is however, that the principle on which the question turns, is one deeper than can be affected by the consideration of the difference of territory. It is that no person ought to be held bound by a judgment rendered without lawful service of process or an authorized appearance.

In several cases of which Elliot vs. Piersoll, 1 Pet. 328, may be taken as an illustration, the former suit was in the same territory. And in the case of Shelton vs. Tiffin, 6 How., 163, the former judgment was rendered by the same

into the township treasury, such portion thereof as he shall collect shall be retained by him and paid out for the following purposes, and in the following order, viz:

First, The amount raised for the general township purposes, to be paid on the order of the Township Board.

Second, The amount raised for school purposes to be paid on the order of the school district officers.

Third, The amount of the highway taxes, to be paid on the order of the Commissioner of Highways."

It is therefore respectfully submitted, that the judgment of the court below ought to be reversed.

H. F. SEVERENS,

Counsel for Plaintiff in Error.

SUPREME COURT U.S.
FILED
JAN 4 1881

SUPREME COURT

OF THE

United States.

JOHN F. B. THOMPSON,
Plaintiff in Error,
vs.
THE UNITED STATES, *ex. rel.*,
THE CAMBRIA IRON COMPANY.

OCTOBER TERM 1880, No 188.

Brief for Defendant in Error.

M. J. SMILEY,
Counsel for Defendant in Error.

Dygert, Buff & Rice, Legal and Commercial Printers, Grand Rapids, Mich.
1880.

Supreme Court of the United States.

JOHN F. B. THOMPSON,
Plaintiff in Error,
vs.
THE UNITED STATES, *ex. rel.*,
THE CAMBRIA IRON COMPANY.

STATEMENT OF THE CASE.

The Cambria Iron Company, a corporation of Pennsylvania, recovered a judgment May 29th, 1876, in the Circuit Court of the United States, for the Western District of Michigan, against the township of Lincoln, a municipal corporation of Michigan, for the sum of $6,273.32 damages and $42.10 costs.

On October 3d, 1876, the plaintiff in said judgment filed its petition for a mandamus, alleging the recovery of said judgment, that a notice thereof had been duly served upon the respondent who was Township Clerk of said township, with a request that he certify the same to the Supervisor of said township as an amount to be raised by tax the then

to appear in the case, and that the township by its treasurer paid him for his professional service.

The Court charged the jury that these resignations were incomplete, not being accepted and successors not being appointed, and the respondent excepted.

The Court also received evidence to show that the motive of said officers in attempting to resign, was to defeat the collection of the petitioner's judgment, and to this the respondent excepted.

A bill of exceptions was settled, and the respondent brings a writ of error.

I.

The laws of Michigan, Sec. 643, Laws of 1871, provide for the election of a supervisor, clerk, and other township officers named at the annual meeting held on the first Monday in April, in each year.

Sec. 649, Provides that "Each of the officers elected at such meetings, except justices of the peace, commissioners of highways and school inspectors, shall hold his office for one year, and until his successor shall be elected and duly qualified."

Sec. 681, Provides that "All officers, except justices of the peace, required to be elected at township meetings by ballot, shall, before entering upon the duties of their offices, and within ten days after notice of their election respectively take and subscribe the oath of office prescribed by the 12th article of the Constitution, before the Township Clerk or some other officer authorized to administer oaths, and file

the same with the Township Clerk, who shall record the same."

Sec. 691, Provides that "Resignations of all officers elected at township meetings shall be in writing, signed by the officer resigning and addressed to the Township Board, and shall be delivered to and filed by the Township Clerk."

Sec. 692, Provides that "Every township office shall become vacant on the happening of either of the events specified in chapter fifteen, as creating a vacancy."

Sec. 617, Provides that "Every office shall become vacant on the happening of either of the following events before the expiration of the term of office:"

First, "The death of the incumbent."

Second, "His resignation."

Third, "His removal from office."

Fourth, "His ceasing to be an inhabitant, etc."

Fifth, "His conviction of an infamous crime."

Sixth, "The decission of a competent tribunal declaring void his election or appointment."

Seventh, "His refusal or neglect to take the oath of office, etc."

Under a provision of the laws of Illinois, quite like Sec. 649 of the Laws of Michigan, this Court held that an officer's resignation was not complete until his successor was elected or chosen and qualified.

Badger et al., vs. U. S. ex rel., Bolles, 93 U. S., 599.

Judge Dillon in his work on Corporations, says: "Acceptance by the corporation is at common law necessary to a consummation of the resignation, and until acceptance by proper authority, the tender or offer to resign is revocable. The right to accept a resignation is a power incidental to every corporation. The acceptance may be by entry in books by vote or resolution, or by treating the place as vacant and electing another to fill it, or ordering an election to fill it if to be filled by a popular vote."

Dillon on Corp., Sec. 163 and Note 4.
Van Ordsall vs. Hazard, 3 Hill, 243, 247.

In the State ex rel., Reeves vs. Ferguson, 31 N. J., Law 107, a mandamus issued against an overseer of highways, to compel him to perform a duty relating to his office: He returned that he did not hold the office. Issue being joined thereon, it appeared on the trial that he had resigned in writing, handed his resignation to the town committee, and four out of the five members had approved of it, the other member not being notified of the meeting. It was held that an acceptance by proper authority was necessary, and that the resignation was incomplete.

II.

This pretended resignation had no filing upon it. It was not filed with the Township Clerk as the law (Sec. 691) requires. The clerk signed the paper and retained it in his own custody. He thus had it in his power to suppress it when he wished to act as clerk, and produce it when his duty required him to do some act towards the levying of a tax to pay the relator's judgment.

III.

Evidence to show that the alleged resignation was a fraud-

ulent pretense, was admissible. It tended to show that the resignation was not real. That while the clerk claimed to have resigned, he only made such a claim when called upon to act in reference to this particular matter. He retained possession of the office and all its papers, including his own pretended resignation, and was in a position to act if he desired, or produce his resignation as an excuse for action.

Creditors have a right of action against a municipality owing them. The corporation cannot deprive them of that right by pretending that it has no officers to represent it, when claims are to be enforced. It seems that this township had officers for all purposes save the collection of this debt. Justice requires that it should be held to have officers for that purpose also.

M. J. SMILEY,
Counsel for Def't in Error.